IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

CRP.No. 398 of 2002(G)

(AGAINST THE ORDER IN IA NO. 1950/2001 IN IA NO. 6176/1999 IN OS NO. 261/93 ON THE FILE OF THE IST ADDL. SUB COURT, ERNAKULAM DT. 22/10/2001)

REVN. PETITIONER: RESPONDENTS IN I.A/DEFENDANTS IN O.S:

1. **SHRI NARAYANA PAI, MUNDASSERY HOUSE, CHITTOOR ROAD, KOCHI-35 (DIED).**
2. **SHRI N.PURUSHOTHAMA PAI, AGED 71, S/O.NARAYANA PAI, RESIDING IN MUNDASSERY HOUSE, CHITTOOR ROAD, KOCHI-35.**
3. **SMT.VASUNDHARA SARVOTHAMAN, W/O.SARVOTHAMAN, 39/A, KRISHNA KRIPA, O.E.N.ROAD, (VIKAS INDUSTRIES LANE), THEKKUMBHAGOM, TRIPUNITHURA-682 301.**

BY SRI.N. PURUSHOTHAMA PAI(PARTY-IN-PERSON)

RESPONDENTS: PETITIONERS/PLAINTIFFS:

1. **MRS.JANIE RAMANAND, W/O.LATE SHRI RAMANAND, 16/339, AZAD LANE, ALUVA.**
2. **MRS.RAJANI, W/O. K.C.RAMESH, RESIDING AT "C" GARDENS, N.H.ROAD, ALUVA-8.**
3. **MRS.RANJANIE, W/O.R.LAKSHMI NARAYAN, "AYODHYA", JEWS STREET, ERNAKULAM, KOCHI-35.**
4. **MRS.RANJISHA, W/O. KRISHNA KUMAR, 16/339, AZAD LANE, ALUVA.**

BY ADV. SRI.RAMANARAYANA PRABHU -- R1 & R3

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CMP NOS. 915/2002 AND 1492/2002 IN CRP NO. 398/2002 G.

DISMISSED

04/07/2007. **SD/- PIUS C.KURIAKOSE, JUDGE.**

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PIUS C. KURIAKOSE,J.

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C.R.P.No.398 of 2002

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Dated: 4th July, 2007

ORDERR

Heard Sri.N.Purushothama Pai, 2nd revision petitioner who appeared before me in person and Sri.Rama Narayana Prabhu, counsel for the respondents.

2. The defendants in a suit for partition who are presently defending application for passage of final decree filed by the plaintiffs are the petitioners. They impugn the order of the learned Subordinate Judge appointing an Advocate Commissioner for the submission of a report regarding the present value of the decree schedule property. The decree schedule property has an extent of 4 cents only and it takes in a residential building which is under the occupation of the 2nd petitioner who is the 2nd defendant in the suit. On the basis of the report submitted by the Advocate Commissioner who was appointed for effecting the partition of the properties to the effect that it is not practically to effect partition by metes and bounds, the instant application I.A.1950/01 was filed by the plaintiffs praying that the decree schedule property be sold by putting auction amongst the sharers. The 2nd petitioner who is in occupation of the building resisted the application very stiffly. He contended inter alia that he

had offered a sum of Rs.75,000/- to the respondents-plaintiffs who are his sisters in full and final settlement of their share in the property which will be only 1/4th. He also contended that it will be possible to separate one cent of property from the remainder portions so that the same can be allotted to the plaintiffs, if they are insisting on land itself towards their share. The learned Subordinate Judge by the impugned order has not granted the prayers made by the respondents in the I.A. The learned Subordinate Judge has in fact observed that the prayer for sale of the property by auction can be ignored in the present context of things. But noticing that in view of the report submitted by the Advocate Commissioner that effecting partition by metes and bounds is not practicable, the learned Subordinate Judge found that it necessary that a valuation of the property inclusive of the building be taken. I am of the view that the petitioners do not have to be aggrieved by the impugned order at the moment. At any rate, the impugned order does not suffer from any infirmity much less any jurisdictional infirmity which appeals to the jurisdiction of this court under Section 115 of the Code of Civil Procedure. The challenge against the impugned order fails and the C.R.P. will stand dismissed. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**